

### Remarks

Applicants have read and considered the non-final Office Action mailed December 17, 2009. Claims 1, 3, 9, 13, 14, and 22 are amended. Claims 32-46 are new. All amendments and the new claims are supported by the present application as originally filed. No new matter is added. Claims 1-26 and 32-46 remain pending.

Reconsideration and allowance of the pending claims are requested for at least the following reasons.

#### I. Claim Rejections – 35 U.S.C. § 103: Tsai and Plyler

Claims 1-11, 13-24, and 26 are rejected under 35 U.S.C. 103(a) as being obvious over Tsai (US 7,204,816) in view of Plyler (US 6,755,599). Applicants respectfully traverse this rejection and do not concede any characterization of the present application or cited references set forth in the Action. However, in an effort to advance the present application to allowance, independent claims 1 and 14 are amended to incorporate subject matter corresponding to a brace member as recited in claims 9 and 22.

The rejection should be withdrawn for at least the following reasons.

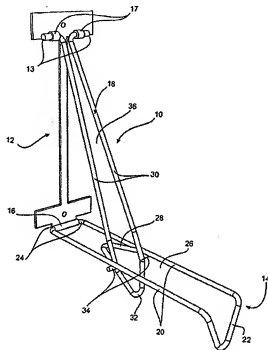
#### A. Claims 1-11 and 13

Independent claim 1 is directed to a bicycle rack. Claim 1 recites:

the rack comprising a base adapted to be fixed to the support, a support member having an outer and an inner edge, the inner edge of the support member being connected to the base to enable the support member to be pivotable about a first axis which in use is to be generally level, the support member being moveable between a first position, at which the support member is adjacent to the support and a second position at which the support member extends laterally from the support, the rack further comprises a brace member supporting the support member when the support member is in the second position, the support member and the brace member being adapted to receive and support a portion of a wheel of a bicycle between the edges when the support member is in the second position.

Figures 1-3 of the present application illustrate one example non-limiting embodiment consistent with the recited elements of claim 1. For example, Figure 2 (reprinted below) illustrates a rack 10 including a support member 14 that is moveable between a first

position and a second position (e.g., as shown in Figure 2). See also, Published Application, ¶[0022]. In use, the support member 14 is generally level in position (e.g., as shown in Figure 2 below and Figure 3).



**Fig. 2.**

The example rack 10 additionally includes a brace member 18 that provides support for the support member 14 when the support member 14 is in its second position. See Published Application, ¶ [0024]. The support member 14 and the brace member 18 being adapted to receive a portion of a bicycle wheel. See Published Application, ¶ [0026].

For at least the following reasons, the purported combination of Tsai with Plyler fails to render claim 1 *prima facie* obvious.

- i. The Action fails to provide rational support for the conclusion of obviousness

The articulated reasoning to support the conclusion of obviousness found at section 2 of the Office Action does not provide a rational underpinning to support the

legal conclusion of obviousness. Specifically, the statement(s) "Tsai teaches the device claimed absent the side braces. Plyler teaches the side braces. To provide Tsai with side braces as taught by Plyler would have been obvious for one having ordinary skill in the art at the time of the invention" is a mere conclusory statement, and as such the purported obviousness rejection cannot be sustained. There is no motivation to combine the references. See MPEP 2141 (III).

ii. Tsai and Plyler fail to disclose or suggest each element of claim 1

Tsai fails to provide subject matter related to a brace member as recited in claim 1. Plyler is cited for providing the disclosure lacking in Tsai. See Office Action, p. 2. However, Applicants assert that Plyler fails to disclose or suggest a brace member that supports a support member, which in use is generally level, and when the support member is in the second position the support member and the brace member being adapted to receive and support a portion of a wheel of a bicycle between the edges when the support member is in its second position as recited in claim 1. Specifically, Plyler discloses a collapsible chock that consists of an upper plate 12, hinged supports 22 and 24, and a rectangular frame housing 20 that is mounted flush or essentially flush with the bed of a trailer or truck. See Plyler, col. 2, ll. 41-48; FIG. 1 (reprinted below).

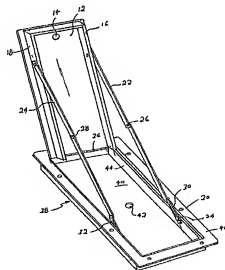


FIG. 1

However, neither the upper plate 12, hinged supports 22, 24, nor the rectangular frame housing 20 correspond to the brace member of claim 1. For example, as is apparent, the only element of the chuck disclosed that is generally level during use is the rectangular frame housing 20. Therefore, only the upper plate 12 or hinged supports 22, 24 may *arguably* correspond to the brace member of claim 1. However, neither the upper plate 12 nor the hinged supports 22, 24 supports the frame housing 20. Rather, the frame housing 20 is mounted to, and therefore supported on, the bed of a trailer or truck. In other words, Plyler fails to disclose or suggest a brace member that supports a support member as recited in claim 1 as the “support member” of Plyler (i.e., housing 20) is supported by trailer bed by virtue of being mounted thereto. This is because the wheel chock of Plyler is simply configured to provide support for a motorcycle during transportation of the motorcycle, and further protect the chock should the trailer transporting the motorcycle be forced to brake suddenly. See Plyler, col. 1, ll. 65-67; col. 2, ll. 58-61.

In view of the foregoing, the purported combination of Tsai with Plyler fails to achieve all elements of claim 1 and therefore fails to render claim 1 *prima facie* obvious. Reconsideration and allowance of claim 1, as well as claims 2-11 and 13 that depend either directly or indirectly therefrom, are requested.

B. Claims 14-24 and 26

Independent claim 14 is directed to a bicycle rack. Claim 14 recites:

the rack comprising a base fixed to the support, a support member having an outer and an inner edge, the inner edge of the support member connected to the base to enable the support member to be pivotable about a first axis which is generally level, to be moveable between a first position, at which the support member is adjacent to the support and a second position at which the support member extends laterally from the support, a brace member, wherein the brace member provides support to the support member when the support member is in the second position, the support member and brace member being adapted to receive and support a portion of a wheel of a bicycle between the edges when the support member is in the second position.

As discussed above, Tsai and Plyler fail to disclose or suggest subject matter related to a brace member that supports a support member, which in use is generally level, and when the support member is in the second position the support member and the brace member being adapted to receive and support a portion of a wheel of a bicycle between the edges when the support member is in the second position such as stated in claim 14. Furthermore, the articulated reasoning to support the conclusion of obviousness found at 2 of the Action does not provide a rational underpinning to support the legal conclusion of obviousness in support of the purported combination of Tsai and Plyler. Applicants assert that claim 14 is therefore allowable for reasons similar to those discussed above.

Reconsideration and allowance of claim 14, as well as claims 15-24 and 26 that depend either directly or indirectly therefrom, are therefore requested.

## II. Claim Rejections – 35 U.S.C. § 103: Tsai, Plyler, and Schroeder

Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being obvious over Tsai and Plyler (as applied above) and in further view of Schroeder (US 6,164,465). Applicants traverse this rejection.

Claim 12 depends from independent claim 1. Claim 25 depends from independent claim 14. As discussed above, Tsai and Plyler fail to disclose or suggest all of the elements of independent claim 1 and independent claim 14. Schroeder fails to remedy the shortcomings of the combination of Tsai and Plyler. For example, Schroeder fails to disclose or suggest subject matter related to a brace member that supports a support member, which in use is generally level, and when the support member is in the second position the support member and the brace member being adapted to receive and support a portion of a wheel of a bicycle between the edges when the support member is in the second position such as recited in respective claims 1 and 14.

Reconsideration and allowance of claim 12 and 25 are therefore requested.

## III. Claim Rejections – 35 U.S.C. § 103: Walker and Plyler

Claims 1-11, 13-24, and 26 are rejected under 35 U.S.C. 103(a) as being obvious over Walker (US 5,246,120) in view of Plyler. Applicants traverse this rejection and do

not concede any characterization of the present application or cited references set forth in the Action. However, as described above, independent claims 1 and 14 are amended in an effort to advance the present application to allowance.

The rejection should be withdrawn for at least the following reasons.

Walker fails to provide subject matter related to a brace member as recited in claim 1. Instead, Plyler is cited for providing the disclosure lacking in Tsai. See Action, pgs. 2-3. However, as shown above, Plyler fails to disclose or suggest a brace member as recited in pending independent claims 1 and 14. Therefore, Walker in view of Plyler fails to disclose or suggest each element of independent claims 1 and 14. Reconsideration and allowance of claims 1 and 14, as well as claims 2-11 and 13, and claims 15-24 and 26 that respectively depend either directly or indirectly therefrom, are therefore requested.

#### IV. Claim Rejections – 35 U.S.C. § 103: Walker, Plyler, and Goff

Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being obvious over Walker and Plyler (as applied above) and in further view of Goff (US 5,505318). Applicants traverse this rejection.

Claim 12 depends from independent claim 1. Claim 25 depend from independent claim 14. As discussed above, Walker and Plyler fail to disclose or suggest all of the elements of independent claim 1 and independent claim 14. Goff fails to provide the teachings lacking in Tsai and Plyler. For example, Goff fails to disclose or suggest subject matter related to a brace member that supports a support member, which in use is generally level, and when the support member is in the second position the support member and the brace member being adapted to receive and support a portion of a wheel of a bicycle between the edges when the support member is in the second position such as recited in respective claims 1 and 14.

Reconsideration and allowance of claim 12 and 25 are therefore requested.

#### V. New Claims

Consideration and allowance of new claims 32-46 are respectfully requested.

VI. Conclusion

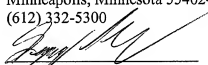
A speedy and favorable action in the form of a Notice of Allowance is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicants' representative at (612) 336-4728.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.

Respectfully submitted,  
MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Date: \_\_\_\_\_

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Gregory A. Sebold  
Reg. No. 33,280  
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